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**Formal Matters**

The Examiner has rejected Claims 1-6, 8-9, and 20-22 under the judicially created doctrine of obviousness-type double patenting, as being unpatentable over Claims 1-9 of U.S. Patent No. 6,296,919. The Examiner contends that, although the claims are not identical, they are not patentably distinct from each other because the instant claims recite a skin thickness that would have been obvious for the article of the patent to have as a result of the method used to make the article claims of the '919 patent as noted above. U.S. Patent No. 6,296,919 and the instant application are commonly owned by Milliken & Company. Applicants have learned that such claims are currently the subject of a reissue application and respectfully request leave to file an appropriate terminal disclaimer until such time as the '919 claims are finally reissued.

The Examiner has rejected Claims 1-6, 8-9, 20-22 and 31 under the judicially created doctrine of obviousness-type double patenting, as being unpatentable over Claims 1-7 of U.S. Patent No. 6,340,514. The Examiner contends that, although the claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art that the rubber second layer of '514 is a thick solid layer as instantly claimed. U.S. Patent No. 6,340,514 and the instant application are commonly owned by Milliken & Company. Applicants have included an appropriate terminal disclaimer to overcome such double patenting rejection.

The Examiner has provisionally rejected Claims 1-6, 8-9, 20-22 and 31 under the judicially created doctrine of obviousness-type double patenting, as being unpatentable over Claims 7 and 10 of U.S. Patent Application No. 09/653,785. The Examiner contends that, although the claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art that the third layer of the '785 application provides a thick skin around the foam layer. U.S. Patent Application No. 09/653,785 and the instant application are commonly owned by Milliken & Company. Applicants respectfully request leave to file an appropriate terminal disclaimer until such time as the Examiner confirms that the claims herein are otherwise in condition for allowance.

The Examiner has provisionally rejected Claims 1-6, 8-9, 20-22 and 31 under the judicially created doctrine of obviousness-type double patenting, as being unpatentable over Claims 7-10 of U.S. Patent Application No. 09/679,467. The Examiner contends that, although the claims

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are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art that the third layer of the '467 application provides a thick skin around the foam layer. U.S. Patent Application No. 09/679,467 and the instant application are commonly owned by Milliken & Company. Applicants respectfully request leave to file an appropriate terminal disclaimer until such time as the Examiner confirms that the claims herein are otherwise in condition for allowance.

The Examiner has provisionally rejected Claims 1-6, 8-9, 20-22 and 31 under the judicially created doctrine of obviousness-type double patenting, as being unpatentable over Claims 7 and 10 of U.S. Patent Application No. 09/672,152. The Examiner contends that, although the claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art that the third layer of the '152 application provides a thick skin around the foam layer. U.S. Patent Application No. 09/672,152 and the instant application are commonly owned by Milliken & Company. Applicants respectfully request leave to file an appropriate terminal disclaimer until such time as the Examiner confirms that the claims herein are otherwise in condition for allowance.

The Examiner has provisionally rejected Claims 1-6, 8-9, 20-22 and 31 under the judicially created doctrine of obviousness-type double patenting, as being unpatentable over Claims 1-2 of U.S. Patent Application No. 09/915,017. The Examiner contends that, although the claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art to make the projections of the '017 application out of foam in order to provide better cushioning because of the teachings of Derr. U.S. Patent Application No. 09/915,017 and the instant application are commonly owned by Milliken & Company. Applicants respectfully request leave to file an appropriate terminal disclaimer until such time as the Examiner confirms that the claims herein are otherwise in condition for allowance.

## **RESPONSE**

### **Art Rejections Under 35 USC §103**

Claims 1-6, 8-9, 20-22, and 31 stand rejected under 35 USC §103(a) as being unpatentable over Rockwell, Jr. et al. (U.S. Patent No.6,296,919) in view of Kerr et al. (US Patent No. 5,227,214). The Office's position is essentially as follows:

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Rockwell, Jr. teaches the use of a mold with holes, heated by a press to vulcanize a foam rubber mat with projections and a fabric top (abstract; column 7, lines 5-15). Kerr et al. '214 teaches mat projections of about 3/32-inch diameter (col. 2, lines 10-15). The instant invention claims a foam rubber mat with projections where the skin of the projections is thick and the projections have a diameter of 1/32 inch to 1/8 inch. It would have been obvious for one of ordinary skill in the art to have understood that there would have been a temperature difference between the surface of the mold next to the heated press and the surface against the main body of the mat, which would result in higher temperatures near the bottom of the projection. Applicant discloses that this temperature difference produces a thicker skin at the bottom of the projections, which are closer to the bottom of the mold. This structure meets the instant claim language. It would have been obvious to make the projections of Rockwell, Jr. et al. about 3/32 inch in diameter to insure good anti-slip properties because of the teachings of Kerr et al. '214.

Applicants respectfully traverse this rejection of Claims 1-6, 8-9, 20-22, and 31. Applicants assert that the '919 patent cannot be used to establish a case of obviousness for reasons set forth in 35 USC 103(c). 35 USC 103(c) states that:

"Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person."

The '919 patent and the present application are both subject to assignment to Milliken & Company. Further, the '214 patent is insufficient alone to establish a prima facie case of obviousness. For these reasons, Applicants believe that the rejection is improper and respectfully request that such rejection be withdrawn.

Claims 1-6, 8-9, 20-22, and 31 are rejected under 35 USC 103(a) as being unpatentable over Derr (US Patent No. 1, 805,038) in view of Kerr et al. (US 5,227,214). The Office's position is essentially as follows:

Derr teaches a foam core and projections with a thick rubber skin (Figure 2). Kerr et al. '214 teaches projections of about 3/32-inch diameter. The instant invention claims a foam rubber core with projections with a rubber cover layer or

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skin around the foam core. It would have been obvious to one of ordinary skill in the art to extend the rubber layer of Derr around the entire foam layer of Derr in order to better protect the layer because of the teachings of Derr that the solid rubber layer protects the foam layer. It further would have been obvious to one of ordinary skill in the art to have used 3/32-inch diameter projections as the projections of Derr in order to better prevent slippage because of the teachings of Kerr et al. '214.

Kerr et al. '214 teaches the use of small circular cleats in conjunction with larger elliptical cleats, while Derr teaches the use of "deep parallel corrugations" to provide an anti-fatigue surface. The combination does not teach the use of only small circular cleats having a dense outer layer over a foam core. Neither teach the creation of an all-rubber mat having three layers of rubber. For these reasons, Applicants believe the combination fails to establish a prima facie case of obviousness and respectfully requests such rejection be withdrawn.

#### CONCLUSION

Reconsideration of pending Claims 1-6, 8-9, 20-22, and 31 in light of the above remarks is respectfully requested. The issue of Terminal Disclaimers has been addressed. It is believed that the Claims are otherwise in condition for allowance, and such action is hereby earnestly solicited.

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Respectfully submitted,



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